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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL CONRIQUE FLORES,

Defendant and Appellant.

C060777

(Super.Ct.Nos.
CRF052422, CRF053173 &
CRF061639)

In March 2005, defendant Samuel Conrique Flores gave alcohol to a minor, penetrated her vagina with his finger, and had sex with her. Defendant was arrested after the minor told her parents what happened, and they informed the police.

Defendant was charged in case No. 05-2422 with rape by force or fear (Pen. Code, § 261, subd. (a)(2)), sexual penetration by a foreign object (Pen. Code, § 289, subd. (a)(1)), sexual intercourse with a minor more than three years younger than defendant (Pen. Code, § 261.5, subd. (c)), sexual intercourse with a minor under the age of 16 when defendant was over the age of 21 (Pen. Code, § 261.5, subd. (d)), sexual penetration by a foreign object with a minor under the

age of 18 (Pen. Code, § 289, subd. (h)), and sexual penetration by a foreign object, with a minor under the age of 16, when defendant was over the age of 21 (Pen. Code, § 289, subd. (i)).

During their investigation in case No. 05-2422, law enforcement officers learned that defendant previously had sexual intercourse with another minor, a 14-year-old girl. Thus, on May 17, 2005, defendant was charged in case No. 05-3173 with unlawful sexual intercourse with a minor more than three years younger than defendant (Pen. Code, § 261.5, subd. (c)).

In March 2006, defendant entered negotiated pleas in both cases. In case No. 05-2422, he pled no contest to sexual penetration by a foreign object with a minor under the age of 18 (Pen. Code, § 289, subd. (h)). In exchange, the remaining charges in that case were dismissed, with a *Harvey* waiver as to one of the counts. (*People v. Harvey* (1979) 25 Cal.3d 754.) In case No. 05-3173, defendant pled no contest to unlawful sexual intercourse with a minor more than three years younger than defendant (Pen. Code, § 261.5, subd. (c)).

In accordance with the plea agreement, defendant was placed on probation for five years. In case No. 05-2422, he was sentenced to 240 days in jail as a condition of probation and was ordered to register as a sex offender, to submit to HIV testing, and to pay a restitution fine of \$220. In case No. 05-3173, he was sentenced to a consecutive term of 90 days in jail as a condition of probation, and was ordered to submit to HIV testing, and to pay a restitution fine of \$220.

During a vehicle stop later that same month, defendant was found in possession of a bag of methamphetamine weighing .12 grams,

which he admitted was his, and an open container of beer. In case No. 06-1639, defendant was charged with transporting methamphetamine (Health & Saf. Code, § 11379), possessing methamphetamine (Health & Saf. Code, § 11377, subd. (a)), and having an open container in his vehicle (Veh. Code, § 23223, subd. (a)).

Defendant pled no contest to possessing methamphetamine and admitted that he violated his probation in case Nos. 05-2422 and 05-3713. In exchange for this plea, he was granted Proposition 36 probation, and the remaining charges in case No. 06-1639 were dismissed.

Defendant's probation in case Nos. 05-2422 and 05-3173 was revoked but reinstated, and defendant was ordered to serve 30 days in the county jail for each violation of probation. He received 48 days of custody credit in case No. 05-2422 but no credits in case No. 05-3173.

In October 2006, Proposition 36 probation was revoked based on the allegation that defendant violated probation by failing to complete a drug treatment program. Defendant admitted the violation, and his probation was reinstated.

Proposition 36 probation was revoked a second time in June 2008 because defendant failed to complete a drug treatment program and failed to obey all laws, i.e., he was convicted of resisting a peace officer, a misdemeanor, in case No. 08-3873, for which he was sentenced to a concurrent term of 60 days in county jail.

Probation in case Nos. 05-2422 and 05-3173 was later revoked based on allegations that defendant failed to complete a sex offender treatment program.

A contested violation of probation hearing was held in all three cases, and the court found defendant violated probation in each case.

Defendant was sentenced to an aggregate term of three years four months in state prison (the midterm of two years in case No. 06-1639; a consecutive term of eight months in case No. 05-2422; and a consecutive term of eight months in case No. 05-3173). He was awarded 162 days of custody credit in case No. 05-2422; 62 days of custody credit in case No. 05-3173; and 125 days of credit in case No. 06-1639.¹

Defendant was ordered to participate in drug counseling while incarcerated (Pen. Code, § 1203.096), to pay a \$200 restitution fine for each felony conviction (Pen. Code, § 1202.4), to pay another \$200 restitution fine for each felony conviction stayed pending successful completion of parole (Pen. Code, § 1202.45), and to pay a lab analysis fee of \$50 (Health & Saf. Code, § 11372.5) plus a penalty assessment of \$140, along with a \$150 drug program fee (Health & Saf. Code, § 11372.7) plus a penalty assessment of \$420.

Defendant appeals, and we appointed counsel to represent him on appeal. Counsel filed an opening brief that sets forth the facts of the case and asks us to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date the opening brief was filed.

¹ This reflects the final calculation of credits. The abstract of judgment was twice amended at the request of defense counsel.

On February 16, 2010, defendant's counsel filed a motion to strike the opening brief and to file a new opening brief. The motion asserted that defendant is entitled to additional custody credits under the recent amendments to Penal Code section 4019 because, although he is required to register as a sex offender, he was not ordered to do so in his most recent case. (Pen. Code, § 4019; Stats. 2009, 3d Ex. Sess., ch. 28, § 50.) Defendant is wrong.

The relevant language of Penal Code section 4019, subdivisions (b)(2) and (c)(2) is unambiguous and its plain meaning must be followed. (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal.3d 152, 155.) "If the prisoner *is required* to register as a sex offender pursuant to Chapter 5.5 . . . for each six day period in which the prison is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement" (Pen. Code, § 4019, subd. (b)(2) & (c)(2); Stats. 2009, 3d Ex. Sess., ch. 28, § 50 [emphasis added].)

Here, defendant *is required* to register as a sex offender based on his prior convictions. Thus, according to the plain wording of the statute, the recent amendments to Penal Code section 4019 do not operate to modify defendant's entitlement to credit. (Pen. Code, § 4019, subds. (b)(2) & (c)(2); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.) Thus, defendant's motion to strike his opening brief and file a new brief is denied.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

The judgment is affirmed.

SCOTLAND, P. J.

We concur:

HULL, J.

BUTZ, J.